SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-5097

HAROLD EUGENE HUFFMAN,

Petitioner,

v.

FAYE I. BOERSEN,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEBRASKA

RESPONDENT'S BRIEF AND APPENDIX

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FAYE I. BOERSEN,

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEBRASKA

RESPONDENT'S BRIEF

OPINION BELOW

Petitioner's statement of the Opinion Below is accepted.

JURISDICTION

Petitioner's statement of the Jurisdiction is accepted.

QUESTION PRESENTED

Is Nebraska Revised Statute Section 25-1914 (1964 Reissue) which requires a bond or cash in the amount of $75.00 to be filed in order to appeal from the trial court to the Nebraska Supreme Court unconstitutional when applied to Harold Huffman who is indigent and unable to post the bond or cash?

STATUTES INVOLVED

Petitioner's statement of the Statutes Involved is accepted.

STATEMENT OF THE CASE

Petitioner's Statement of the Case is accepted.

SUMMARY OF THE ARGUMENT

1. Harold Huffman appealed a decision, granting an annulment to Faye Boersen, from the District Court of Hall County, Nebraska, to the Nebraska Supreme Court. He met all cost and fee requirements and was able to pay for a printed brief. The only financial requirement he could not meet was the $75.00 cash or bond requirement in Nebraska Revised Statute Section 25-1914 (1964 Reissue). This Statute guarantees that the Appellant will pay all court costs assessed against him on appeal up to $75.00. Court costs assessed against the loser on appeal include the winning party's Brief printing costs. This Statute protects the financial interests of the private litigant and not the state. *Cohen v. Beneficial Industrial Loan Corporation*, 337 U.S. 541 (1948) holds that states have the right to establish reasonable financial and cost requirements in civil litigation. In *Cohen* a bond requirement for plaintiffs was upheld in a stockholders derivative action. *Lindsey v. Normet*, 40 U.S.L. Week 4184 (No. 70-5045, February 23, 1972) indicated that an Oregon standard appeal bond requirement was valid on

its face and *Lindsey* is a firm foundation for the validity of the Nebraska cost bond statute under attack herein. If the Nebraska appeal bond cost requirement is held to be unconstitutional, without an alternate remedy, Nebraska is forced to abandon its policy of providing financial protection for the winning civil litigant on appeal or its policy of taxing the court costs to the loser on appeal. These policies must be abandoned or Nebraska will be required to pay the winner's costs out of state funds, if the loser cannot pay because of his poverty.

2. *Boddie v. Connecticut*, 401 U.S. 371 (1971) is distinguishable from the case at bar. The financial interest of a private litigant, as opposed to the state, is involved in this case. In *Boddie*, the state suffered the financial loss when the filing fee was waived. In this case Faye Boersen loses her $75.00 guarantee for payment of her costs if she wins in the Nebraska Supreme Court. Harold Huffman's right to have an appellate tribunal determine the validity of a marriage – to a woman that does not want the marriage – does not approach the "fundamental" status required in *Boddie*. On this issue as to the right of Faye Boersen to obtain an annulment, the only issue validly decided by the Hall County District Court, Huffman's appeal to the Nebraska Supreme Court is without merit and frivolous. Nebraska law is clear that a marriage is void when one of the parties to the marriage contract is already married. See *Scott v. Scott*, 153 Neb. 906, 46 N.W. 2d. 627 (1951). That is the fact situation in this case. Faye Boersen was married to Richard Boersen when she married Huffman. A meritless appeal should not be used to extend *Boddie* to the appellate level of civil litigation.

3. The Equal Protection clause as applied in *Griffin v. Illinois*, 351 U.S. 12 (1956) should not be extended to this civil appellate litigation between two private litigants. If Nebraska must provide economic equality for all civil litigants, the financial ramifications could be staggering. Financial equality in civil litigation would call for payments of all filing

fees, process fees and court costs plus attorney fees, discovery expenses and bond requirements. If the indigent is given a free pass to civil litigation procedures, then perhaps the Equal Protection clause demands that people who can afford such passage be given this free access to all courts and litigation procedures as well. Consideration would have to be given to providing free litigation procedures for everyone or giving financial assistance to everyone based upon the level of financial ability of each litigant. Faye Boersen contends that the Equal Protection clause does not require the state to waive the cash or bond requirement in this case.

4. If the Court does invalidate the cost bond requirement in this case, Faye Boersen requests that she be protected financially by alternative methods. This Court could allow her to file a typewritten brief in the Nebraska Supreme Court thus relieving her of the brief printing expense. Her only other cost on appeal is a $5.00 filing fee. As an alternative, this Court could allow Huffman to pay the costs taxed against him on appeal by an installment method secured by an assignment of his prison wages. These two alternative methods would be fair to both parties.

ARGUMENT

I. THE STATE OF NEBRASKA HAS THE RIGHT TO ESTABLISH REASONABLE REQUIREMENTS TO PROTECT WINNING CIVIL LITIGANTS ON APPEAL AGAINST COURT COSTS.

The particular Statute under attack here and the Statute that Harold Huffman was unable to comply with is Nebraska Revised Statute Section 25-1914 (1964 Reissue) which reads as follows:

> "On appeal in any case taken from the district court to the Supreme Court the appellant or appellants shall, within one month next after the rendition of the judgment or decree or the making of the final order, sought to be reversed, vacated or modified,

> or within one month from the overruling of a motion for a new trial in said cause, file in the district court a bond or undertaking in the sum of seventy-five dollars to be approved by the clerk of the district court, conditioned that the appellant shall pay all costs adjudged against him in the Supreme Court; or in lieu thereof, shall make a cash deposit with said clerk of at least seventy-five dollars for the same purpose; *Provided*, that if a supersedeas bond is executed no bond for costs shall be required. The giving of either form of bond or the making of such deposit shall be certified to by the clerk of the district court in the transcript for the Supreme Court. The appeal may be dismissed on motion and notice in the Supreme Court if no bond has been given and certified in the transcript, or within such additional time as may be fixed by the Supreme Court for good cause shown."

The plain purpose of this Statute is to guarantee that the Appellant in the Nebraska Supreme Court shall pay the court costs assessed against him on appeal if he loses. These court costs include the brief printing expenses of the Appellee (Supreme Court Rule 9d, Appendix A, Page 7a of Petitioner's Brief). Definite expenses are involved in the brief printing because Rule 9a of the Nebraska Supreme Court says that all briefs shall be printed unless otherwise allowed by the Court on good cause shown (Supreme Court Rule 9a, Appendix A, Page 7a of Petitioner's Brief). Harold Huffman did not attempt to have the printing requirement waived in the Nebraska Supreme Court and his brief printing expenses were $88.58 (Appendix B of Petitioner's Brief).

The Nebraska Supreme Court, in *School District v. Travers*, 43 Neb. 524, 61 N.W. 720 (1895), established the right of the State of Nebraska to set up some requirements for appeal when it said:

> "While the legislature is powerless to take away the right guaranteed by the Constitution to a party to

> have his cause reviewed in the Court of last resort by appeal or error, yet it is not prohibited from prescribing reasonable rules and regulations for such review, such as requiring the Appellant to give a bond." 43 Neb. 524, at 527 and 528.

The appeal bond statute under attack here simply protects the winning appellee litigant against absorbing his own court costs up to $75.00. The appeal bond requirement thus serves a valid state policy of protecting private litigants who win on appeal from financial loss on the court costs. The policy behind the Statute also must be to attempt to limit unnecessary appellate litigation. To allow an appeal with no bond requirement would serve only to foment unnecessary appellate litigation. Civil litigants appealing with their own funds have to weight their probability of success on appeal and the value to them of a victory against the possible costs of appeal. An indigent with all fee requirements waived does not have to make any such decision and has nothing to lose by appealing. This raises the very real danger of crowded court dockets. In the case of Harold Huffman this danger is very apparent. He has already filed numerous cases in the federal courts in forma pauperis (A. 24-28).

Mr. Justice Black in a vigorous dissent on *Boddie v. Connecticut*, 401 U.S. 371 (1971) relied upon *Cohen v. Beneficial Industrial Loan Corporation*, 337 U.S. 541 (1948) as authority for the proposition that states have the right to establish reasonable financial and cost requirements in civil litigation. In *Cohen* the Court upheld a requirement for the Plaintiff to post a bond for security for costs before proceeding in a stockholders derivative action. The Court said: "A state may set the terms on which it will permit litigation in its courts" (337 U.S. 541, 552). And the Court went on to say: ". . . (I)t is within the power of the state to close its courts to this type of litigation if the condition of reasonable security is not met" (337 U.S. 541, 552). The purpose behind the statutory requirements in

Cohen was to discourage frivolous and unnecessary stockholders derivative actions. The *Cohen* case stands as direct authority for the validity of the appeal bond statute involved in the case at bar.

If the Court invalidates the appeal bond requirement herein without an alternative remedy, it is forcing the abandonment of the state's policy of protection of civil litigants or it is requiring the state to pay the winner out of state funds, or it is forcing the state to abandon the policy of taxing the court costs against the loser. See *The Supreme Court, 1970 Term,* 85 Harv. L. Rev. at 112 (1971). Nebraska should have the right to establish these policies in setting up and maintaining its judicial system.

II. THE REASONABLE APPEAL COST BOND REQUIREMENT HEREIN DOES NOT DENY HAROLD HUFFMAN DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The case heavily relied on by Harold Huffman in his Brief is *Boddie v. Connecticut,* 401 U.S. 371 (1971). In the *Boddie* case, the state's requirement of a filing fee in divorce actions was held to be void when applied to indigents. In *Boddie,* the state itself suffered the financial loss when the fee was waived while the private litigants were not financially affected except that the Plaintiff's filing fee requirements were waived. The Court was very careful to limit *Boddie* to its own facts: "We do not decide that access for all individuals to the courts is a right that is, in all circumstances, guaranteed by the due process clause of the 14th Amendment so that its exercise may not be placed beyond the reach of any individual" (401 U. S. 371, 382). Faye Boersen strongly urges that the *Boddie* case should not be extended to appellate litigation between private parties when the requirement set up by the State of Nebraska only affects the financial interest of the private litigants. It is easier for the state to bear the loss.

The Court in *Boddie* held that the Plaintiff had a fundamental right to seek judicial dissolution of a marriage when without such a hearing, she was bound to a marriage that was not satisfactory. Access to the trial court in the *Boddie* case may be entirely different than access to the appellate court in this case as applied to Harold Huffman. Does Harold Huffman have a fundamental right to litigate the validity of his marriage to Faye Boersen on appeal? What Harold Huffman seeks to maintain in this action is an alleged marriage to a woman that won't live with him even after he finishes his term in the Nebraska Penal Complex. This would not appear to be the type of "fundamental" right that the Court should seek to protect by guaranteeing an appellate hearing.

In *State ex rel Caulk v. Nichols*, 281 A. 2d. 24 (Del. 1971), the Delaware Court had occasion to rule on the constitutionality of a bond requirement insuring the recovery of a debt on appeal from Justice of the Peace Court. The Court indicated that they were not being asked to waive a right of the State to recover its costs but they were being asked to waive a right of a litigant to being guaranteed payment of a debt if he's obligated to relitigate the case in the Superior Court. Making this distinction, the Delaware Court upheld the bond requirement.

Another case which refused to extend *Boddie* to civil litigation was *Chidsey v. Guerin*, 443 F. 2d. 584 (6th Cir. – 1971). In *Chidsey*, the Court affirmed the requirement of a bond on appeal from a reparation order issued by the Secretary of Agriculture. To obtain judicial review of the reparation order in the District Court, the licensee had to post a bond for double the amount of the reparation award. The question was whether or not the bond requirement violated the due process clause when applied to the licensee who lacked assets to post the bond. The Court upheld the bond requirement and said that the penalty for failure to post bond would at the most be a two or three year suspension of the licensee's privilege to be a broker. The

Court found that this interest did not qualify as "fundamental" under the *Boddie* test and held that unlike *Boddie*, access to the courts was not the only remedy.

III. THE REASONABLE APPEAL BOND REQUIREMENT IN THIS CASE DOES NOT DENY PETITIONER EQUAL PROTECTION OF THE LAWS UNDER THE 14TH AMENDMENT.

Huffman also relies on the Equal Protection clause of the Fourteenth Amendment and its application in *Griffin v. Illinois*, 351 U.S. 12 (1956) to support his argument. *Griffin* applies directly to criminal appeals and has led to varied application in the criminal law and habeas corpus areas. Huffman seeks to extend the Equal Protection clause in *Griffin* to civil appeals. Faye Boersen contends that such an extension is not warranted in this case.

What Huffman seeks here is to be placed on an equal economic basis with people that can pay the cost of civil litigation. The State of Nebraska should not be required to do this.

Justice Frankfurter concurring in *Griffin v. Illinois*, 351 U.S. 12 (1956) said: "Of course a state need not equalize economic conditions" (351 U.S. 12, 23). Mr. Justice Minton and Burton, dissenting in the same case said: "Illinois is not bound to make the defendants economically equal before its bar of justice" (351 U.S. 12, 28), and said further: "The Constitution requires the equal protection of the law, but it does not require the states to provide equal financial means for all defendants to avail themselves of such laws" (351 U.S. 12, 29). Mr. Justice Harlan dissenting in *Douglas v. California*, 372 U.S. 353 (1963), stated:

> "The equal protection clause does not impose on the states 'an affirmative duty to lift the handicaps flowing from differences in economic conditions' (Dissenting opinion in *Griffin v. Illinois*). To so construe it would be to read into the Constitution a philosophy of leveling that would be foreign to many of our basic concepts of the proper relations

> between government and society. The state may have a moral obligation to eliminate the evils of poverty but is not required by the equal protection clause to give to some whatever others can afford." (372 U.S. 353, 362).

If the State of Nebraska must place Huffman on an equal financial basis with people who can pay for civil litigation, then the Court should consider the ramifications that flow from such a ruling. Generally, the decisions in this area discuss the difference between the "rich" and the "poor." Actually, many of our citizens lie somewhere in between these two extremes depending on the economic scale that is established to fit the definitions. If the Court gives the truly poor people, such as Huffman, a free pass in civil litigation, then to be truly equal to all citizens, it must consider giving everyone a free pass or giving financial assistance or subsidies based upon the economic situation of each litigant. In order to treat everyone truly equal in this area these ideas must be seriously considered. It is not true equality to give one litigant free access to all levels of our courts and deny it to someone else who can pay with or without financial burden or hardship.

If this nominal security requirement is held to be invalid, it opens the door to all civil litigation expenses including the appointment of counsel. It also poses the question that perhaps all state fees for services are invalid when applied to indigents. This case could pose a very real question as to whether or not all state fees on the poor man may be in jeopardy, including tuition to universities and schools, roads, licenses and any other services in areas in which there is significant state activity. The financial impact of this case on the states could be staggering.

The Court in *Lindsey v. Normet*, 40 U.S.L. Week 4184 (No. 70-5045, February 23, 1972) gave a clear indication that *Griffin* and *Boddie* do not extend to reasonable appeal bond requirements in civil litigation. The Court in *Lindsey* had occasion to discuss a standard appellate bond require-

ment which protected the litigant who won in the trial court. While holding that the double appellate bond requirement violated the Equal Protection Clause the Court indicated that the standard appeal bond requirement may well be valid. In *Lindsey*, the Court discussed Oregon Revised Statute Section 19.040 which required an appellant to post an undertaking covering all damages, costs and disbursements which may be awarded against him on appeal. This was the standard appeal bond requirement and not the double bond requirement. The Court indicated that this standard bond requirement would raise no serious constitutional objection at least on its face. It went on to say that:

> "While a state may properly take steps to insure that an appellant posts adequate security before an appeal to preserve the property at issue, to guard a damage award already made, or to insure a landlord against loss of rent if the tenant remains in possession, the double bond requirement here does not effectuate these purposes since it is unrelated to actual rent accrued or to specific damage sustained by the landlord" (40 U.S.L. Week 4184, 4191 (1972).

The Court thus indicated that a reasonable appeal bond requirement in this case which insures only the payment of the court costs is probably valid on its face. The issue which the Court must now decide is whether or not the similar Nebraska Statute covering only court costs is unconstitutional and thereby invalid as applied to an indigent who is unable to meet the requirement. Faye Boersen contends that the Equal Protection Clause does not extend to this type of economic equality.

IV. IF THE COURT WISHES TO EXTEND THE *BODDIE* PRINCIPAL TO CIVIL LITIGATION BETWEEN PRIVATE PARTIES ON APPEAL, THIS IS NOT THE PROPER CASE IN WHICH TO DO SO.

At this point, Faye Boersen concedes, stipulates and admits that the issue of paternity of the child born to Faye Boersen has not been validly decided and any finding on such point by the trial court is not res judicata. Faye Boersen makes this statement because the issue of paternity was never raised by Faye Boersen's Petition (A. 1). It was not intended to be an issue in the case and as far as Faye Boersen is concerned, it is subject to future litigation and a judicial determination by separate action at any time. What has been decided is the issue of whether or not the marriage between the parties was valid or a nullity (A. 50).

On the annulment issue, Petitioner's appeal to the Nebraska Supreme Court is without merit and is frivolous. The law is well established in Nebraska that a marriage is void when one of the parties to the marriage contract is already married. See *Scott v. Scott*, 153 Neb. 906, 46 N.W. 2d. 627 (1951). This rule of law was later affirmed as recently as 1961 in *Copple v. Bowlin*, 172 Neb. 467, 110 N.W. 2d. 117 (1961). It is also clear that under Nevada law when the marriage was entered into, it was a void marriage in Nevada. Under Nevada Statutes Section 125.290 it is stated that a marriage is prohibited by law on account of either one of the persons having a wife or husband then living and that said marriage is void without decree, divorce, annulment or other legal proceeding.

Faye Boersen was married to Richard Boersen when the marriage contract was entered into between Faye Boersen and Harold Huffman (A. 60). Huffman has never denied this fact. It is well settled that the marriage was void. Huffman's appeal on the annulment issue is entirely frivolous and the Court should not accept such a frivolous appeal as the basis for extended *Boddie* to appellate litigation. This is another reason why Huffman's right to appeal this

case does not reach the "fundamental" level required by *Boddie.*

The primary question in the case at bar is whether or not the appeal bond requirement is unconstitutional and also whether or not Harold Huffman has a right to an appellate hearing without complying with the bond requirement. The questions of right to counsel and right to appear at trial at State expense might be considered in deciding whether or not the appeal is frivolous. If the Court accepts Faye Boersen's position that the issue of paternity has not been validly litigated and limits the issue in this case to one of annulment, it is clear that the appeal is not meritorious. Appearance of counsel or appearance of Harold Huffman would not change the fact that Faye Boersen was a married woman when she married Harold Huffman and under the clear law of the State of Nebraska, the marriage was void from the inception.

V. EVEN IF THE COURT FINDS THAT THE APPEAL BOND REQUIREMENT IS UNCONSTITUTIONAL AS APPLIED TO HUFFMAN, THE STATE'S POLICY OF PROTECTION TO FAYE BOERSEN SHOULD BE CONTINUED BY ALTERNATIVE METHODS.

Faye Boersen is presently without sufficient funds to pay her attorney and is without sufficient funds to pay the printing costs in the Nebraska Supreme Court or this Court. She could probably borrow sufficient money to pay the printing costs in the Nebraska Supreme Court. She was able to pay the necessary filing fee of $26.00 and the service of process fees in this case at trial court level. She, as well as Huffman, is entitled to some protection. It would not be fair in this case to allow the financial statutory protection to be removed from her without substituting some type of protection in exchange. Without the bond requirement, Faye Boersen has no chance of collecting her brief printing expenses from Huffman, who is indigent.

If Huffman loses and does not have to post the bond on appeal the reverse discrimination against people with money as mentioned by Justice Harlan dissenting in *Griffin v. Illinois*, 351 U.S. 12 (1956), would be very real to Faye Boersen. Faye Boersen suggests that there are two ways to protect her: (1) The Court could waive the printed brief requirements and allow Faye Boersen to file a typewritten brief in the Nebraska Supreme Court thus relieving her of her court costs. This would remove the financial burden to her. The other method is to allow Harold Huffman to pay the costs by an installment method secured by an assignment of his prison wages which are thirty cents per day (A. 10). See Goodpaster, *The Integration of Equal Protection, Due Process Standards and the Indigent's Right of Free Access to the Courts*, 56 Iowa L. Rev. 223, 259 (1970).

The Nebraska Legislature has now acted in this area. Legislative Bill 1120 (attached as Appendix A to this Brief) was passed with the emergency clause on March 20, 1972. It became effective the day Governor J. J. Exon signed it which was March 21, 1972. This legislation now effectively covers situations such as the one in this case. This Bill is not retroactive but it does point out that Nebraska should be given the right to handle this type of matter by legislative process, which has now been done. See Comment, *Discriminations Against the Poor and the Fourteenth Amendment*, 81 Harv. L. Rev. 435, 442-446 (1967).

CONCLUSION

For the reasons stated, it is respectfully submitted that the Order of the Nebraska Supreme Court dismissing Huffman's appeal should be affirmed or in the alternative, if the decision of the Nebraska Supreme Court is reversed, Respondent prays that some alternative financial protection be granted to her.

Respectfully submitted,

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APPENDIX A

LEGISLATURE OF NEBRASKA
EIGHTY-SECOND LEGISLATURE
Second Session

Legislative Bill 1120
Final Reading

Introduced by Judiciary Committee, Roland Luedtke, 28th District, Chairman; Harold D. Simpson, 46th District; Walter H. Epke, 24th District; John W. DeCamp, 40th District; Fred W. Carstens, 30th District; Ernest Chambers, 11th District; Terry Carpenter, 48th District; P. J. Morgan, 4th District

Read first time January 4, 1972
Referred to committee on Judiciary
Sent to printer January 5, 1972
Final form sent to printer March 16, 1972

A BILL

FOR AN ACT to establish proceedings in forma pauperis in the State of Nebraska; to provide for violations; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Any court of the State of Nebraska, or of any county or municipality shall authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security, by a person who makes an affidavit that he is unable to pay such costs or give security. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

Sec. 2. In any civil or criminal case the court shall, upon filing of a like affidavit, direct the responsible officer of the court to issue and serve all the necessary writs, process and proceedings, and perform all such duties without charge.

Sec. 3. In any civil or criminal case the court shall, upon filing of a like affidavit, direct that the expense of process by publication, if such process is required by the court, be paid by the county in the same manner as other claims are paid.

Sec. 4 In any civil or criminal case the court may, upon the filing of a like affidavit, order witnesses to be subpoenaed, if the court finds that they have evidence material and necessary to the case, and that they are within the judicial district in which the court is held, or within one hundred miles of the place of trial. In such case the process and the fees of the witnesses shall be paid by the county in the same manner as other claims are paid.

Sec. 5. In civil or criminal case the court shall, upon filing of a like affidavit, direct that the expenses of printing the record on appeal, if such printing is required by the appellate court, be paid by the county in the same manner as other claims are paid.

Sec. 6. In any civil or criminal case the court shall, upon filing of a like affidavit, order transcripts to be furnished without cost if the suit or appeal is not frivolous, but presents a substantial question, and if the transcript is needed to prepare, present or decide the issue presented by the suit or appeal. Such costs shall be paid by the county in the same manner as other claims are paid.

Sec. 7. In any civil or criminal case on appeal, upon the filing of a like affidavit, the court shall direct that the expense of printing of the appellate briefs, if such printing

is required by the court, be paid by the county in the same manner as other claims are paid.

Sec. 8. The court may dismiss the case or permit the affiant to proceed upon payment of costs if the allegation of poverty is untrue, or if the court is satisfied that the action is frivolous or malicious.

Sec. 9. In the event any person prosecutes or defends an action or proceeding in forma pauperis successfully, any and all cost deferred by the court under the provisions of this act shall be first satisfied out of any money paid in satisfaction of judgment.

Sec. 10. Anyone who fradulently invokes the privileges of this act shall be guilty of perjury and shall, upon conviction thereof, be punished as provided in section 28-701, Reissue Revised Statutes of Nebraska, 1943.

Sec. 11. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.